IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WA.No. 834 of 2003

(*AGAINST THE JUDGEMENT IN OP.38361/2002 Dated 17/12/2002)*

APPELLANT/4TH RESPONDENT

THE CANARA BANK, PAYYANNUR BRANCH,
REP. BY LEGAL OFFICER.

BY ADV. SRI.M.C.SEN
SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN

RESPONDENTS/ PETITIONER AND RESPONDENTS 1, 2, 3 AND 5
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1. K.SREEPRAKASH,
S/O.K.JANARDHANAN NAMBIAR, KOROM NORTH,
KOROM AMSOM, KANNUR DISTRICT.

2. DISTRICT COLLECTOR, KANNUR.

3. THE SPECIAL DEPUTY TAHSILDAR (RR)
TALIPARAMBU, KANNUR DISTRICT.

4. VILLAGE OFFICER, KOROM.

5. SREELATHA K., W/O.VINAYAKUMAR M.P.,
SAROJ, PILATHARA, MANDOOR (VIA), KANNUR DT.

R2 TO R4 BY SPL. GOVERNMENT PLEADER SHRI C.T. RAVIKUMAR.
R1 BY ADV. SHRI C.P. PEETHAMBARAN.
BY ADV. SRI.M.SASINDRAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 834 OF 2003

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Dated this the 16th July, 2007

J U D G M E N T

H.L. Dattu, C.J.:

This appeal is directed against the orders passed by the learned single Judge in O.P. 38361 of 2002 dated 17.12.2002. The petitioner before the learned single Judge was the guarantor for the amounts borrowed by the fifth respondent. The bank had initiated proceedings against the petitioner as well as the principal borrower for recovery of the amounts due to them.

2. The petitioner, aggrieved by the said action of the bank, was before this court in O.P.No. 38361 of 2002 . The learned single Judge, being of the opinion that in the interest of both the parties a direction need be issued to the bank, first to recover the amounts due to the bank from the fifth respondent by effecting sale of the mortgaged property and if for any reason, the decree is not satisfied, then to proceed against the guarantors and disposed of the Original Petition in the above manner.

3. Having gone through the orders passed by the learned single Judge and the averments made in the Writ Appeal as well as in the Original Petition, we are of the view that the orders so passed by the learned single Judge cannot be said to be characterised either as arbitrary or perverse. In that view of the matter, we do not intend to entertain this Writ Appeal. But, we make it clear that the orders passed by the learned single Judge in the aforesaid Original Petition should be confined only to the facts and circumstance of that

case and that the orders passed by the learned single Judge should not be treated as a precedent in any other case.

Accordingly, the Writ Appeal is disposed of. I.A.No. 62 of 2003 is also disposed of.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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H.L. DATTU, C.J. &
K.T. SANKARAN, J.

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W.A. No. 834 OF 2003

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Dated this the 16th July, 2007

J U D G M E N T